

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 8

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD L. ROETKEN,
WILLIAM J. ROY, and
NINEV KARL ZIA

Appeal No. 1999-1768
Application 08/811,230

ON BRIEF

Before FRANKFORT, PATE, and STAAB, Administrative Patent Judges.
FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 3, which are all of the claims pending in this application.

Appellants' invention relates to an apparatus and method for heating an enclosure, and more particularly to a method and apparatus for ensuring that a proper level of combustion air is provided to the furnace depending on the type of installation that is involved. As noted on pages 2 and 3 of the specification, prior to the time that a furnace is installed, it is not known whether the furnace will be vented horizontally or vertically. Thus, in the prior art, in order to provide an adequately strong inducer motor, the motor would have to be sized for horizontal venting. If the furnace were installed with vertical venting, the inducer motor would be oversized, with the oversized motor resulting in a decrease in efficiency and increased noise. Appellants' solution to this problem in the prior art is to provide a two speed inducer motor that can be used as a single speed inducer with either a vertically or horizontally vented furnace. More specifically, appellants note on pages 3 and 4 of the specification that

[t]he inducer has a common terminal, a low speed terminal and a high speed terminal. In conventional two-speed furnace inducer systems, one lead is attached to each of the three terminals and the control automatically selects a speed. However, in the present invention, one lead is attached to the common terminal and, depending on whether the furnace is vented horizontally or vertically, either the high speed or low speed terminal is used. If the furnace is vented

Appeal No. 1999-1768
Application 08/811,230

vertically, one lead is connected to the common terminal and the other lead is connected to the low speed terminal. Thus, the inducer system operates at a low speed when the furnace is vented vertically. If the furnace is vented horizontally, one lead is connected to the common terminal and the other lead is connected to the high speed terminal. Thus, the inducer system operates at the higher speed when the furnace is vented horizontally. This design approach allows, as a further benefit, the avoidance of cost associated with systems available from manufacturers with two-speed/two-stage furnaces.

A copy of claims 1 through 3 on appeal can be found in the Appendix to appellants' brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Nelson	4,334,855	June 15, 1982
McCann	5,558,689	Dec. 17, 1985

Claims 1 through 3 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nelson in view of McCann.

Rather than attempt to reiterate the examiner's commentary with regard to the above-noted rejection and the conflicting viewpoints advanced by the examiner and appellants regarding the rejection, we make reference to the examiner's answer (Paper No. 7, mailed March 19, 1999) for the reasoning in support of the

Appeal No. 1999-1768
Application 08/811,230

rejection, and to appellants' brief (Paper No. 6, filed February 16, 1999) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by appellants and the examiner. As a consequence of our review, we have made the determination that the examiner's rejection of claims 1 through 3 will be sustained. Our reasons for this determination follow.

In rejecting claims 1 through 3 under 35 U.S.C. § 103(a) based on Nelson and McCann, the examiner points out that it is well known in the art to discharge gases from an induced gas furnace either vertically as in Nelson or horizontally as in McCann. The examiner further urges that it is also well known and taught in Nelson to use a two speed motor for the induced draft blower (as at 61 in Figure 4) which can selectively be operated at either a high speed or a low speed. From these teachings, the examiner has concluded (answer, pages 3-4) that

[t]o operate the motor 61 of Nelson at the low speed when the flue or vent pipe is positioned vertically, and if the flue or vent pipe is modified to be positioned horizontally to operate the motor at a high speed would have been an obvious matter of choice to one of ordinary skill in the art.

The examiner additionally urges (answer, page 4) that the use of a two speed motor for either vertical or horizontal venting in gas furnaces "would have been an obvious matter of convenience" and that since no quantity of gases vented from the furnace or velocity of gases vented from the furnace is disclosed, and "low speed" and "high speed" denote no particular speeds, such would appear to have no patentable significance.

While we do not agree with the examiner's position that it would have been merely an obvious matter of choice to operate the inducer motor (61) of Nelson at a low speed when the flue or vent pipe is positioned vertically, and at a high speed if the flue or vent pipe of Nelson were modified to be positioned horizontally, we will nonetheless sustain the examiner's rejection of appellants' independent claims 1 through 3 on appeal under 35 U.S.C. § 103(a). We do so because these claims lack novelty when compared with the disclosure and teachings of the Nelson patent.

In this regard, it is our opinion that the broad language of claims 1 through 3 on appeal is readable on Nelson alone.

Looking, for example, at claim 1 on appeal, we note that the apparatus of Nelson includes a furnace which has a two speed inducer motor (61) having a common terminal, a low speed terminal and a high speed terminal (see Figure 4 of Nelson). Nelson likewise discloses (e.g., in Fig. 1) a vent pipe (80) connected to said furnace and adapted for venting the combustion products of the furnace. As may also be seen in Figure 1, the vent pipe (80) is depicted as being installed in a substantially vertical position or orientation. A control system which is adapted to provide electrical power to the inducer motor (61) is schematically shown in Figure 4 of Nelson, as is a first wire in electrical communication with the control system and the common terminal of the inducer motor (61). A second wire is connected to the low speed terminal of the inducer motor and a third wire is connected to the high speed terminal of the motor. Thus, since Nelson shows and discloses a furnace apparatus with a vertical vent pipe position and first and second wires connected to an inducer motor as required in claim 1 on appeal for such a vertical vent pipe position, Nelson actually anticipates the subject matter broadly set forth in appellants' claim 1 on

appeal. For a vertical vent pipe orientation as in Nelson, appellants' claim 1 on appeal does not preclude the presence of a third wire connected to the high speed terminal of the inducer motor, or preclude that the inducer motor, at some stage of its operation, may be operated using the connection to the high speed terminal. Indeed, once the vertical orientation or position of the vent pipe is established (as it is in Nelson), the other option provided for in the claim (i.e., a horizontal orientation or position for the vent pipe) is irrelevant.

With respect to method claims 2 and 3 on appeal, we are again of the view that Nelson anticipates, since Nelson discloses providing a furnace with a two speed inducer motor (61) having a common terminal, a low speed terminal and a high speed terminal, venting combustion products from the furnace through a vent pipe (80) in one of two orientations (i.e., vertical), and providing electrical power to the common terminal and the low speed terminal, at least during a portion of the operation cycle of the inducer motor, when the vent pipe is in the vertical orientation. Again, we note that once the vertical orientation of the vent pipe is established, the second option set forth in the claims on appeal is irrelevant.

Contrary to appellants' argument in the brief (page 3), the claims on appeal do not require that the two speed inducer motor be installed in such a way as to operate at only one speed, with the other speed being unused during the life of the furnace unit. More specifically, claims 1 and 3 on appeal do not require that there only be a first and a second wire and that the control system be connected via the second wire only to the low speed terminal or only to the high speed terminal depending on vent pipe orientation, and claim 2 does not require that electrical power be provided at all times only to the low speed terminal or only to the high speed terminal depending on vent pipe orientation.

Simply stated, appellants' claims on appeal do not define over Nelson alone, and thus the examiner's rejection of claims 1 through 3 on appeal based on the collective teachings of Nelson and McCann under 35 U.S.C. § 103(a) will be sustained. As has been made clear by our reviewing Courts on numerous occasions, anticipation or lack of novelty is the ultimate or epitome of obviousness. See, in this regard, In re Fracalossi, 681 F.2d 792, 794, 215 USPQ 569, 794 (CCPA 1982); In re Pearson, 494 F.1399, 1402, 181 USPQ 641, 644 (CCPA 1974).

Appeal No. 1999-1768
Application 08/811,230

The examiner's decision rejecting claims 1 through 3 of the present application under 35 U.S.C. § 103(a) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

CHARLES E. FRANKFORT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
WILLIAM F. PATE, III)	
Administrative Patent Judge)	APPEALS AND
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)	INTERFERENCES
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Appeal No. 1999-1768
Application 08/811,230

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